

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 339 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD ELECTRICITY COMPANY LIMITED

Versus

LALCHANDBHAI JESINGLAL SHAH

Appearance:

MR HB SHAH for Appellant

MR BM MANGUKIYA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/09/98

ORAL JUDGEMENT

1. Heard the learned counsel for parties. This is an appeal under Order 43 Rule 1 CPC at the instance of the original defendant -Electricity Company challenging the injunction granted by the trial court in favour of the respondent-plaintiff.
2. The respondent-plaintiff had filed a suit for mandatory injunction directing the defendant-Electricity

Company to restore the electric supply in respect of service no. 314887 connected at the premises of the plaintiff, and in the said suit had filed an injunction application exh.6 for similar interim mandatory injunction. The trial court after hearing the parties, granted the injunction as sought in exh. 6, and directed the defendant-Electricity Company to restore the electricity connection immediately, subject to the condition that the plaintiff deposits the assessment charges of the last six months of consumption (which approximately come to Rs. 45,000/-), and thereafter to continue to pay regular bills as and when issued by the defendant-Company, coupled with the direction that the plaintiff shall file an undertaking to pay the defendant-Company the balance of the assessment amount with interest at the rate of 12% per annum from the date of the demand till the realization in case the plaintiff loses in the suit.

3. The Supreme Court has laid down the principles to be kept in mind by a court dealing with appeal from orders under Order 43, Rule 1, and in this context, in the case of Wander Limited, reported at 1990 (supp) SCC Page 727, and particularly in paragraphs 9 and 14 of the said decision, had occasion to observe that an appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the evidence independently, if the assessment of evidence and the conclusions thereon arrived at by the trial court are reasonable. The above principle laid down by the Supreme Court has also been followed by the Supreme Court in the subsequent case of N.R. Dongrey and others, reported at 1996 (5) SCC 714.

4. On the facts of the case I find that the trial court has appreciated the evidentiary material on record on a prima facie basis in a reasonable manner, and that the findings of fact recorded and the conclusions drawn therefrom are just and reasonable. This appeal is, therefore, dismissed.

5. Even otherwise on the facts of the case, it cannot be disputed that this is an equitable order, where the last six months' assessment charges have been directed to be deposited with the defendant-Company, when the same is seen in the context of the plaintiff's contentions that the defendant-Company has merely made a demand for money, which is without any basis, inasmuch as the same is not a regular assessment nor the demand made by preferring any bill whatsoever whether ad hoc or

final.

6. In the premises aforesaid, I am of the opinion that no useful purpose is likely to be served by deciding the present appeal merely on academic issues, and that interest of justice would best be served by directing the trial court to dispose off the pending suit as early as possible and in any case not later than 30th September, 1999.

7. The trial court is accordingly so directed.

8. The trial court shall have the discretion to refuse adjournments and/or to impose conditions in granting the same, if and when necessary.

9. Although not strictly necessary, it may only be pointed out that the trial court shall hear and decide the suit on merits, on the basis of evidence on record and application of the correct law to the facts as established by evidence on record. Thus, the trial court while deciding the suit shall not necessarily be influenced by the findings of fact recorded in the impugned order inasmuch as the same are only prima facie findings recorded for the purpose of deciding exh. 6.

10. In view of the aforesaid directions, no further orders are necessary in the present appeal and the same is accordingly disposed off with no order as to costs.

11. Yadi to the trial court forthwith i.e. not later than 18th September, 1998. Direct service permitted.

Amp/-